IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE JURISDICTION

FIRST APPEAL NO.870 OF 1991
WITH
FIRST APPEAL NO.817 OF 1991

FIRST APPEAL NO.870 OF 1991

The State of Maharashtra,)
through the Special Land)
Acquisition Officer, Panvel.).. Appellant
(Org.Opponent)

Vs.

1. Shri Ismile ABdul Gafur Patel,)
Since deceased through his)
legal heirs:)

1.a) Smt. Maimuna Ismail Patel,)
Wife, AGe 75 yrs.,)
R/a.Taloja, Tal.Panvel,)
Dist : Raigad.)

1.b) Smt.Jubeda M.Shafi Patel,)
Daughter, Age 55 years,)
R/a.Panvelpada Mohalla,)
Dist.Raigad.)

1.c) Shri Ibrahim Ismail Patel,)
Son, Age 54 years,)
R/a.Taloja, Tal. Panvel,)
Dist. Raigad.)

1.d) Shri Gulam Ahmed Ismail Patel,)
Son, Age 52 years,)
R/a.Taloja, Tal. Panvel,)
Dist. Raigad.)

1.e) Smt.Saruma Nisar Kaji,)
Daughter, Age 51 years,)
R/a.Taloja, Tal. Panvel,)
Dist. Raigad.)

1.f) Shri Gulam Mustafa Ismail Patel,)
Son, AGe 50 years,)
R/a.Taloja, Tal. Panvel,)
Dist. Raigad.)

1.g) Smt.Julekha Allimiya Patel,)
Daughter, Age 49 years,)
R/a. Kacchi Mohalla,)
Tal.Panvel, Dist. Raigad.)

1.h) Smt.Jaitun M.Hanif Mulla,)
Daughter, Age 48 years,)
R/a.Taloja, Tal. Panvel,)
Dist. Raigad.)

1.i) Smt.Havabi Ismail Patel,)
Daughter, Age 45 years,)
R/a.Taloja, Tal. Panvel,)
Dist. Raigad.)

1.j) Shri Gulam Murtaja Ismail Patel,)
Son, Age 42 years,)
R/a.Taloja, Tal. Panvel,)
Dist. Raigad.)

1.k) Shri Abbas Ismail Patel,)
Son, Age 40 years,)
R/a.Taloja, Tal. Panvel,)
Dist. Raigad.)

1.l) Shri Illias Ismail Patel,)
Son, Age 38 years,)
R/a.Taloja, Tal. Panvel,)
Dist. Raigad.)

1.m) Shri Isaq Ismail Patel,)
Son, Age 35 years,)
R/a.Taloja, Tal. Panvel,)
Dist. Raigad.)

1.n) Shri Mohammad Noor Ismail Patel,)
Son, AGe 32 years,)
R/a.Taloja, Tal. Panvel,)
Dist. Raigad.)

1.o) Smt.Hakima Ismail Patel,)
Wife, since deceased,)

2. Shri Mahamad Yusuf Abdul)
Gafur Patel,)

3. Smt.Khatijabibi Javade)
Hajimiya Patel,)
Since deceased through her)
Legal Heirs:-)

3.a) Smt.Mumtaj Begam Javade)
Mohamudmiya Kaji,)
Daughter, Age 60 years,)
R/a.Taloja Panchnand,)
Tal.Panvel, Dist. Raigad.)

3.b) Shri nasruddin Hajimiya Patel,)
Son,Age 58 years,)
R/a.Taloja Panchnand,)
Tal.Panvel, Dist. Raigad.)

3.c) Shri Shabbir Ahmed Hajimiya)
Patel, Son, Age 55 years,)
R/a.Taloja Panchnand,)
Tal. Panvel, Dist. Raigad.)

3.d) Smt.Jainabbibi Javeja A.)
Latif Patel,)
Daughter, Age 53 years,)
R/a.Patel Mohalla,)
Tal. Panvel, Dist. Raigad.)

3.e) Smt.Sugarbibi Javaje Gulam)
Mahamad Kaji,)
Daughter, Age 51 years,)
R/a.Taloja, Tal. Panvel,)
Dist. Raigad.)

3.f) Smt.Joharabibi Javaje Iqbal)
Kaji, Daughter, Age 47 years,)
R/a.Taloja, Tal. Panvel,)
Dist. Raigad.)

4. Smt.Fatimabibi Mainuddin Patel,)
Since deceased through her)
Legal Heirs:-)

4.a) Smt.Rajiyabegam A. Hamid)
Subhedar, Daughter,)
Age 55 years, R/a. Taloja,)
Tal. Panvel, Dist. Raigad.)

4.b) Smt.Salyabibi Bashir Ahmed)
Divan, Daughter, Age 55 years,)
R/a.Taloja, Tal. Panvel,)
Dist. Raigad.)

4.c) Shri Khalid Husen Mainuddin)
Patel, Son, Age 50 years,)
R/a.Taloja, Tal. Panvel,)

Dist. Raigad.)

4.d) Smt.Maryambibi Shabbir Ahmed)
Patel, Daughter, Age 48 years,)
Tal.Taloja, Tal. Panvel,)
Dist. Raigad.)

4.e) Smt.Bilkisbegam Anwar Patel,)
Daughter, Age 45 years,)
R/a.Taloja, Tal. Panvel,)
Dist. Raigad.)

4.f) Smt.Mohasinabibi Anwar Patel,)
Daughter, Age 40 years,)
R/a.Pada Mohalla, Panvel,)
Tal.Panvel, Dist. Raigad.)

4.g) Smt.Hajirabibi Mainuddin Patel,)
Daughter, Age 35 years,)
R/a.Tajoja, Tal. Panvel,)
Dist. Raigad.)

5. Smt.Marayambibi Hajimiya Patel,)

6. Smt.Aishabibi Ibrahim Patel,)

7. Smt.Najirabibi Sidhikmiya Patel,)

8. Shri Abdulrajak Isufmiya Patel,)

9. Shri Mahamadshafi Yusufmiya)
Patel, since deceased through)
her Legal Heirs:-)

9.a) Smt.Ruksana M.Shafi Patel,)
Wife, Age 48 years,)
R/a.Taloja Panchnand,)
Tal.Panvel, Dist. Raigad.)

9.b) Miss. Juveriya M.Shafi Patel,)
Daughter, AGe 15 years,)
R/a.Taloja Panchnand,)
Tal.Panvel, Dist. Raigad.)

9.c) Miss.Munira M.Shafi Patel,)
Daughter, Age 13 years,)
R/a.Taloja Panchnand,)
Tal. Panvel, Dist. Raigad.)

9.d) Shri Umer M.Shafi Patel,)
Son, Age 11 years,)

R/a. Taloja Panchnand,)
Tal. Panvel, Dist. Raigad.)

10. Shri Abdulalij Isufmiya Patel,)

11. Smt.Hajirabibi Isufmiya Patel,)

12. Smt. Noorjaha Yusufmiya Patel,)

13. Smt.Fatima Isufmiya Patel.).. Respondents.
(Org.Claimants)

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Smt.G.P.Mulekar, AGP for the Appellant.

Shri R.S.Datar for the Respondents/claimants.

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WITH

FIRST APPEAL NO.817 OF 1991

1. Shri Ismile Abdul Gafur Patel,)
Since deceased through his)
legal representatives:)

1/1. Maimuna Ismail Patel,)
1/2. Halima Ismail Patel,)
1/3. Jubeda M.Shafi Patel,)
R/o.Pada Mohalla, Panvel,)
Dist.Raigad.)

1/4. Saruma Nisar Kaji,)

1/5. Julekha Ali Mia Patel,)
r/o.Kachchi Mohalla,)
Taluka Panvel, District-Raigad)

1/6. jaitun M.Hanif Mulla,)

1/7. Havabi Ismail Patel,)

1/8. Ibrahim Ismail Patel,)

1/9. Gulam Ahmed Ismail Patel,)

1/10. Gulam Mustafa Ismail Patel,)

1/11. Gulam Murtaja Ismail Patel,)

1/12. Abbas Ismail Patel,)

1/13. Ilyas Ismail Patel,)

1/14. Isak Ismail Patel,)

1/15. Mohd. Noor Ismail Patel,)
Nos.1/2, 1/4, 1/6 to 1/15)
residing at Taloja,)
Tal. Panvel, Dist. Raigad.)

2. Mahamad Yusuf Abdul Gafur)
Patel,)

3. Khatijabibi Javade Hajimiya)
Patel,)
Since deceased through her)
Legal Heirs:-)

3/1. Nasruddin Hajimiya Patel,)
Age 52 years,)

3/2. Shabbir Ahmed Hajimiya Patel,)
Age 47 years,)

3/3. Smt.Mumtaj Begam Javaja)
Mohammad,)
Miya Kazi, Age 50 years,)

3/4. Jainab Bibi Javaje A. Latif)
Patel, Age 45 years,)

3/5. SugarEbibi Javaje Gulam)
Mahhammad Kazi,)
Age 40 years,)

3/6. Johara Bibi Javaje Iqbal Kazi,)
All residing at Taloja,)
Panvel, Dist.-Raigad.)

4. Fatimabibi Mainuddin Patel,)
Since deceased through her)
Legal Heirs:-)

4(1) Khalid Hussain Maimuddin Patel,)
Age 38 years,)

4(2) Smt.Rajiya Begam A.Subedar,)
Age 47 years,)

4(3) Smt.Balma Biti Bashir Ahmed)
Diwan, Age 40 years,)

4/4. Maryam Bibi Shabbir Ahmed Patel,)

4/5. Bilkis Begam Anwar Patel,)
Age 30 years,)

4/6. Mohasini Bibi Anwar Patel,)
Age 27 years,)

4/7. Hajira Bibi Mainuddin Patel,)
Age 22 years,)
All residing at Taloja,)
Panvel, Dist- Raigad.)

5. Marayambibi Hajimiya Patel,)

6. Aishabibi Ibrahim Patel,)

7. Hajirabibi Sidhikmiya Patel,)

8. Abdulrajak Isufmiya Patel,)

9. Shri Mahamadshafi Yusufmiya)
Patel, since deceased through)
her Legal Heirs:-)

9/1. Rukshana Javaje M.Shafi Patel,)
Age 38 years,)

9/2. Umer M.Shafi Patel,)
Age 7 years,)

9/3. Juveriya M.Shafi Patel,)
Age 10 years,)

9/4. Munina M. Shafi Patel,)
Age 8 years.)
All residing at Taloja,)
Panvel, Dist. Raigad.)

10. Abdulalij Isufmiya Patel,)

11. Hajirabibi Isufmiya Patel,)

12. Noorjaha Yusufmiya Patel,)

13. Fatima Isufmiya Patel.).. Appellants
(Org.Claimants)

Vs.

The State of Maharashtra,)
through the Special Land)
Acquisition Officer,)
Metro Centre No.V, Panvel,)
District - Raigad.).. Respondent.
(Org.Opponent)

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Shri R.S.Datar for the Appellants.

Smt.G.P.Mulekar, AGP for the respondent.

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CORAM : R.M.S.KHANDEPARKAR &
V.M.KANADE, JJ.

DATED : 29TH SEPTEMBER, 2005.

ORAL JUDGMENT : (PER R.M.S.KHANDEPARKAR, J)

1. Since both the appeals arise out of the common judgment and award passed by the reference Court, they were heard together and are being disposed of by this common judgment.

2. The First Appeal No.870 of 1991 has been filed by the State of Maharashtra whereas the First Appeal No.817 of 1991 has been filed by the claimants.

3. The claimants' land bearing Survey Nos.40, 44/1, 39/1, 37/4C, 7/2/7/A, 37/1/A, 36/8, 37/40/68/8, 37/18 and 36/7 situated in village Taloja, Taluka -

Panvel, District of Thane, were sought to be acquired by a notification issued under Section 4 of the Land Acquisition Act 1894, hereinafter called as "the said Act", and published in Government Gazette on 4th February, 1970. The award in exercise of powers under Section 11 of the said Act was declared on 6th December 1985 thereby awarding compensation for the land of the claimants at the rate of Rs.3/- and Rs.4/- per sq.meter. Being dissatisfied, the claimants preferred reference application under Section 18 of the said Act claiming Rs.15/- p.s.m. which was thereafter by way of amendment enhanced to Rs.25/- and further to Rs.30/- p.s.m. The reference court after recording the evidence which comprised of testimony of the claimants and their valuer, awarded compensation at the rate of Rs.15/- p.s.m. Being dissatisfied with the said award, the State of Maharashtra has filed the First Appeal No.870 of 1991 whereas the claimants have filed the First Appeal No.817 of 1991 claiming compensation at the rate of Rs.40/- p.s.m.

4. The learned advocate appearing on behalf of the State of Maharashtra, while assailing the impugned award submitted that the reference Court erred in enhancing compensation at the rate of Rs.15/- p.s.m. solely on the basis of the testimony of the claimants

and the valuer ignoring the fact that the said testimony nowhere assists the claimants to justify enhancement of the compensation. She further submitted that the reference court failed to take note of the fact that the testimony of the valuer was on the basis of his inspection carried out nearly 19 years after the publication of the notification under Section 4 and that the sale instances, which were sought to be relied upon by the valuer, were in relation to strips of land or pieces of land situated in the neighbourhood of the residents of the houses. The reference Court did not consider the issue regarding deductions to be made in case the land is to be considered as potential and suitable for construction activities. The valuation in relation to a large piece of land cannot be on the meter basis but it is to be on the hectare basis. In the absence of cogent evidence being produced on record by the claimants, the reference Court erred in granting enhancement to the extent of Rs.15/- p.s.m. She relied upon the decisions in the matter of **Viluben Jhalejar Contractor (Dead) by LRs. v. State of Gujarat,** reported in (2005)4 SCC 789, **P.Rajan and Another v. Kerala State Electricity Board and Another,** reported in (1997) 9 SCC 330, **Kasturi & Ors. v. State of Haryana,** reported in (2003)1 SCC 354,

Administrator General of West Bengal v. Collector, Varanasi, reported in AIR 1988 SC 943, **Ratan Lal Gupta & Ors. v. Union of India,** reported in (1996)7 SCC 3, and in the matter of **Special Land Acquisition Officer, Bangalore v. V.T.Velu & Ors.,** reported in (1996) 2 SCC 538.

5. On the other hand, the learned Advocate for the claimants while assailing the impugned award submitted that the reference Court erred in taking note of the fact that the evidence produced on record clearly justified the enhancement of compensation for more than Rs.30/- p.s.m. He further submitted that the testimony of the valuer in support of the claim of the claimants for enhancement of compensation has gone unchallenged and it clearly established the justification for enhancement of compensation at least to the tune of Rs.40/- p.s.m. This Court had occasion to deal with the acquisition proceedings in different cases of land acquisition in respect of five different villages in the district of Thane and particularly in Taluka of Panvel. The judgment in that regard was delivered on 16th March, 2000 in different appeals arising in those cases and considering the valuation done in the earlier decision in First Appeal No.875 of 1986 in respect of the acquired land in the village

Taloja and considering the location of the different pieces of land in comparison with the location of Mumbai-Pune National Highway as well as Thane-Pune Highway, had awarded compensation in the range of Rs.14/- to Rs.25/- p.s.m. Considering the same, certainly the compensation awarded by the reference Court at the rate of Rs.15/- is to be considered at a very lower rate and needs to be enhanced at least to the extent to Rs.25/- p.s.m., if not, as claimed by the claimants. He has placed reliance in the said decision dated 16th March, 2000 delivered by the Division Bench of this Court in First Appeal No.382 of 1984 and various other first appeals. Relying upon the decision of the Apex Court in the matter of **Bhim Singh & Ors. v. State of Haryana & Anr.,** reported in 2003 SC 4382, he has submitted that such reliance on the decision already given by this Court in different matter relating to the land in the same village is relevant for the purpose of decision regarding market value of the land in question. Drawing attention to the decision in **Tanaji Abasaheb Pawar & Ors. etc. v. State of Maharashtra & Anr.,** reported in (2005)1 All India Land Acquisition & Compensation Cases 332, the learned advocate submitted that bearing in mind the scheme under the said Act merely because the valuer had visited the land nearly 19 years after the date of

issuance of the notification under Section 4, that by itself cannot be considered to be sufficient to discard the testimony of such valuer as it cannot be presumed that every land owner had knowledge about the fact that he had to establish market value with the help of the expert valuer. Shri Kulkarni, who was examined as expert valuer, had been the Valuer in various other cases in the locality and the judicial notice of the said fact should be taken and that itself should be considered to be sufficient to give due credence to his testimony.

6. Plain reading of the impugned award discloses that the reference Court, while heavily relying upon the testimony of the valuer Shri Kulkarni and on consideration of the location of the land in question and its situation based on the evidence led by the claimants, has held that the market value of the acquired land to be Rs.15/- p.s.m. as on 3rd February, 1970. The impugned award nowhere discloses any analysis of the testimony of the valuer and it merely proceeds on the basis that the testimony of the valuer has not been contradicted or disproved either by way of cross-examination or examination-in-chief of any efficient valuer by the Government. In fact, failure in that regard on the part of the Government

has been considered as justification to rely upon the testimony of the valuer, who had been examined on behalf of the claimants, without any analysis of such testimony and that too without any effort on the part of the reference Court to ascertain upto what extent, the testimony of the valuer could justify the claim for compensation even at the rate of Rs.15/- p.s.m. The reference Court has nowhere referred to the issue regarding comparability of the land in question with the lands which were subject matter of the sale instances which were sought to be relied upon by the valuer or that the pieces of land which were subject matter of the land under reference stated to have been considered by the valuer. The reference Court has also not considered the fact that the valuer had no occasion to inspect the land in question in the year when the notification under Section 4 was issued and the fact that the land had been inspected by the valuer only in the year 1989 whereas the notification under Section 4 was issued in the year 1970. Considering all these aspects, therefore, the judgment having been delivered without the analysis of the evidence on record in the manner it was required to be analysed and the reference Court having proceeded on mere assumptions and presumptions regarding credibility of the testimony of the valuer without

addressing itself to the relevant issues which were required to be considered while dealing with the matter pertaining to the market value of the acquired land and in particular, bearing in mind the law laid down by the Apex Court in **The Special Land Acquisition Officer, Bangalore, v. T.Adinarayan Setty,** reported in AIR 1959 SC 429, the impugned award cannot be sustained.

7. The first point which arises for our consideration is whether the valuation of the land under acquisition can be simply on the basis of the decision delivered by this Court in relation to another land acquired in the same village ?

8. In **Bhim Singh's case (supra)**, the Apex Court observed that in some of the judgments the High Court had taken note of the fact that in respect of earlier acquisitions some matters had come to the Apex Court and the Apex Court had approved the rate fixed by the High Court in those matters, and in that context, it was held that :-

> "It was rightly held that when this Court had fixed rates in respect of earlier acquisitions for the same purpose, it was better to adopt

> those rates with suitable increases than to rely upon sale instance."

The decision is on the point that when the Apex Court had approved certain rates for a particular area, the same has to be taken as the basis rather than referring to sale instances from another villages. The decision nowhere lays down that the value so fixed should be blindly applied to the subsequent acquisitions of land. It specifically states that the rates so fixed in respect of earlier acquisitions for the same purpose, could be adopted as the basis for fixing the rates with suitable variations to the subsequent acquisition of land from the same village. Bearing in mind the said decision, if one peruses the decision of the Division Bench of our Court delivered on 16th March, 2000 in First Appeal No.875 of 1985 and others (unreported), undoubtedly, it is in relation to various lands which were sought to be acquired by issuance of notification under Section 4 in the year 1970 from the village Taloja and the Court preferred to rely upon the earlier judgment of the Division Bench in First Appeal No.382 of 1984 which was delivered in March, 1987 and had a map and the valuation report submitted on behalf of claimants therein which was not disputed by the State, to

justify enhancement on the basis of rates fixed in the said Appeal No.382 of 1984.

9. The Apex Court in **T.Adinarayan Setty's case (supra)** had in clear term laid down the law as regards the method to be adopted for assessment of compensation in relation to the lands acquired under the said Act. It was held therein that it is not disputed that the function of the Court in awarding compensation under the Act is to ascertain the market value of the land as or the date of the notification under S.4(1) and the valuation should be may on the basis of (1) opinion of experts, (2) the price paid within a reasonable time in bona fide transactions of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages and (iii) a number of years purchase of the actual or immediately prospective profits of the lands acquired. The said decision has been reiterated by the Apex Court in number of decisions delivered after the decision of T.Adinarayan's case, Besides, it has been time and again clarified by the Apex Court that, while relying upon any other material including the decisions of the Court or sale instances, the issue regarding comparability cannot be ignored. It is absolutely necessary to ascertain whether the land

which had been the subject matter of a decision of the Court is comparable with the land which is a subject matter of the valuation in the case before the Court.

10. The Apex Court in **Viluben Jhalejar Contractor's case (supra)** had ruled that the market value is ordinarily the price the property that may be fetched in the open market if sold by a willing seller unaffected by the special needs of a particular purchase. It was also observed that one of the principles for determination of the amount of compensation for acquisition of land would be the willingness of an informed buyer to offer the price therefor, and it is beyond any cavil that the price of the land which a willing and informed buyer would offer would be different in the cases where the owner is in possession and enjoyment of the property and in the cases where he is not. It was also held that "where definite material is not forthcoming either in the shape of sales of similar lands in the neighbourhood at or about the date of notification under Section 4(1) or otherwise, other sale instances as well as other evidences have to be considered." However, it was further ruled that "the amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified

having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-a-vis the land under acquisition by placing the same two in juxtaposition." The Apex Court has identified the positive factors to be, smallness of size; proximity to a road; frontage on a road; nearness to developed area; regular shape, level vis-a-vis land under acquisition and special value for an owner of an adjoining property to whom it may have some very special advantage, while the negative factors have been identified as largeness of area; situation in the interior at a distance from the road; narrow strip of land with very small frontage compared to depth; lower level requiring the depressed portion to be filled up; remoteness from developed locality; and some special disadvantageous factors which would deter a purchaser. The said ruling clearly holds that the blind application of any earlier decision to the facts of the case under consideration would be an abuse of power by the Court in relation to the evaluation of the market value for the purpose of determination of compensation under the said Act. In order to apply such decision, it is equally necessary

to determine the issue of comparability of the land which was subject matter of the earlier decision with the land in question before the Court. In the absence of such exercise being done, merely because in the earlier case, certain rates were awarded for the land even in the vicinity of the land which is the subject matter of the decision before the Court, that itself would not be a justification to ascertain the market value of the land in question, at that rate, nor the decision of the Apex Court in **Bhim Singh's case (supra)** lays down any law to the contrary. Being so, merely because in the First Appeal No.875 of 1985, the rates within the range of Rs.14/- to 25/- per sq. meter were awarded for various pieces of land in the village Taloja, that itself may not be the rates to be applied to the land in question without deciding the comparability between the land in question and the pieces of land which were subject matter of the said appeals. Undisputedly, there is no evidence led in that regard before the Court. Mere reliance in the decision in the First Appeal No.875 of 1985 and others (unreported), therefore, will be of no help to the claimants to justify enhancement of compensation or to justify the enhancement granted by the Reference Court.

11. The next point which arises for our consideration is whether the valuation could have been on meter basis or ought to have been on the acre basis. Undisputedly, the land which is acquired in the case in hand admeasures 63490 sq.meters in area. In other words, 6 hectares and 3490 sq.meters. or 15 acres, 34 ares and 90 sq.meters.

12. In **Pitambar Hemlal Badgujar's case (supra)**, it was held therein that it is settled by a series of the Apex Court's judgments that determination of the compensation in respect of the lands acquired on the square foot basis is an obvious illegal principle being adopted by the courts only to inflate the market value and no reasonable prudent purchaser would be willing to purchase the land on the square foot basis when large extent of land is offered for sale and the same rule will apply in the case of the land acquired for public purpose. It was also observed that the Courts are required to consider, sitting in the armchair of the prudent purchaser acting in normal conditions prevailing in the open market, whether, when offered to purchase the land by a willing vendor, he would purchase the same in an open market and the Court on that touchstone should evaluate the market value. The law on the point as to whether the

evaluation of the market value in case of pieces of land could be on the meter basis or it should be on the acre basis, is therefore clearly laid down by the Apex Court in **Pitambar Hemlal Badgujar's case (supra).** Similar was the decision in **P. Rajan's case (supra)** wherein it was held that when a large extent of land is acquired, determination of compensation on the basis of a cent, square yard or square foot is a wrong principle and the principle of fixation on acreage basis should be considered as the correct principle.

13. It is to be noted that the land which was acquired in **Pitambar's Hemlal Badgujar's case (supra)** was 2 acres of land covered in Survey No.339/B and 1 acre and 34 gunthas from different Survey No.339/A-2. In **P.Rajan's case (supra)**, the area which was acquired was 7 acres and 8 cents. Considering the said ruling of the Apex Court, the area of 15 acres and above can, by no stretch of imagination, be held to be a small piece of land. It squarely falls within the expression "large extent of land" or "large piece of land". Being so, the learned advocate for the Government is justified in contending that the valuation should have been not on the basis of the meter but on the basis of acre. Undisputedly, the valuation by the land acquisition officer was on the

hectare basis and for the purpose of claiming enhancement of compensation, the claimants had shown the same with arithmetical calculation that the compensation offered by the Land Acquisition Officer was at the rate of Rs.2/- and Rs.4/- per sq.meter. Being so, the reference Court clearly erred in ignoring the law laid down by the Apex Court in the matter of ascertaining the market value of large extent of land.

14. The next point which arises for consideration is whether the sale instances which were sought to be relied upon are of any assistance to the claimants to justify the enhancement of compensation ? The learned advocate appearing for the claimants has fairly submitted that those sale instances refer to smaller pieces of land. Considering the same and bearing in mind the ruling by the Apex Court in **Administrator General of West Bengal v. Collector, Varanasi's case (supra)** as well as **Ratan Lal Gupta's case (supra),** those sale instances in relation to the smaller plot of land could be of no help to determine the compensation in relation to the large extent of land. Besides, the testimony of the claimants as well as the valuer nowhere discloses any evidence comparing the nature and the location of the land in question with

the pieces of land which were subject matter of those sale instances. In other words, there is no evidence to deal with the issue of comparability between the land in question with the pieces of land which were subject matter of those sale instances and on that count also those sale instances are of no help to determine the market value of the land in question.

15. The next point which arises for consideration relates to the testimony of the valuer. Perusal of the testimony of the valuer apparently discloses a clear statement to the effect that he had inspected the site on 4th May, 1989 to assess the market value as on 4th February, 1970 i.e. the date of notification. In other words, the land in question was sought to be inspected nearly 19 years after the date of issuance of notification. Obviously, the valuer had no personal knowledge about the situation in loco in the year in which the notification under Section 4 was issued in relation to the land in question. Undisputedly, the valuer had not disclosed any documentary material regarding the situation in loco in the said year, either in his testimony or in his valuation report. His testimony regarding the factual situation at the site in relation to the plot in question in the year 1970 is purely hearsay

evidence, which cannot be given any credibility.

16. As regards the sale instances and other decisions which are stated to have been considered by the valuer to ascertain market value, apart from the claim that he had considered the comparability between the land in question with the pieces of land which were subject matter of those decisions and the sale instances, no evidence regarding such actual consideration of the issue of comparability has been placed on record. Mere claim of consideration by the valuer is different from the evidence regarding such comparability between the land in question with the pieces of land which were subject matter of the sale instances and those decisions. Being so, we wonder what evidentiary value can be attached to such a testimony of the valuer. In the absence of cogent material being disclosed by the valuer which could have been the basis for arriving at a particular figure to be the market value of the land, and bearing in mind the decision of the Apex Court which leaves us with no option than to hold the testimony of the valuer to be without any credibility, it is to be held that the testimony of the valuer is of no help to ascertain the market value of the land in question.

17. The learned advocate for the claimants however has submitted that the testimony of the valuer has gone unchallenged, and therefore, the same cannot be totally discarded. In the land acquisition proceedings, it is for the claimant to establish that his claim regarding enhancement of compensation is well justified and this has to be done by the claimant by adducing cogent evidence in support of his claim for enhancement. The burden in that regard essentially lies upon the claimants. No doubt, the normal rule is that in case of the burden of proof is discharged by the party, the onus would shift upon the opposite party. It is also a normal rule of evidence that once a statement of fact is not challenged by the opposite party, it can be deemed to have been established. However, in the case of proceedings under Land Acquisition Act, there is an exception to this rule inasmuch as that mere weakness in the defence by the State or failure on the part of the Government advocate to cross-examine the claimants' witnesses effectively, that by itself cannot be sufficient to conclude about the establishment of the facts alleged by the claimants and their witnesses in the course of their testimony. Such facts which are necessary to be established for discharging the burden of proof regarding the claim for enhancement of

compensation are to be proved with necessary materials in support of such statement of fact. Any decision in that regard, if required, one can safely rely upon the one in the matter of **P.Ram Reddy & Ors. v. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad & Ors.,** reported in (1995)2 SCC 305, wherein the Apex Court, while reiterating its earlier decision in **Chaturbhuj Pande v. Collector** (AIR 1969 SC 255), and while answering the question as to whether the statements of the witnesses in such proceedings which are not subjected to cross-examination or effective cross-examination or that no contrary evidence is adduced, is the Court obliged to accept such statements to be true in determining the market value of the lands acquired, held thus, "it is, no doubt true, that whenever oral evidence is adduced by parties on certain matters in controversy, it may become difficult for the court to overlook such evidence, if it is not shown by effective cross-examination of such witnesses who have given such evidence or by adducing contra-evidence, that the oral evidence was unreliable or the witnesses themselves are not creditworthy. But, in land acquisition references before civil courts, when witnesses give oral evidence in support of the claims of claimants for higher compensation, the ineffective

cross-examination of such witnesses, is not an uncommon feature if regard is had to the manner in which claims for enhanced compensation in land acquisition cases are defended in courts on behalf of the State. Indeed, when a question arose before this Court whether the court is bound to accept the statements of witnesses only because they have not been effectively cross-examined or evidence in rebuttal has not been adduced, it was observed by this Court in Chaturbhuj Pande v. Collector thus:-

> It is true that the witnesses examined on behalf of the appellants have not been effectively cross-examined. It is also true that the Collector had not adduced any evidence in rebuttal; but that does not mean that the court is bound to accept their evidence. The Judges are not computers.... they are bound to call into aid their experience of life and test the evidence on the basis of probabilities."

Considering the decision of the Apex Court, and taking into consideration the testimony of the valuer, as stated above, therefore, it does not deserve any credibility for the purpose of ascertaining the market

value of the land in question.

18. Yet another issue which is sought to be raised is regarding failure on the part of the reference Court to consider the point regarding necessity of the deduction being made while applying the price of developed land to the land acquired in undeveloped form. Undoubtedly, the decisions relied upon disclose the necessity of consideration of the said aspect of the matter. However, in the case in hand, it is not necessary to deal with the said issue in the facts and circumstances of the case.

19. Undoubtedly, the learned advocate appearing on behalf of the claimants contended that the evidence on record justifies the grant of compensation at the rate of Rs.25/- and not at the rate of Rs.40/- as is asked for by the claimants. However, as already stated above, there is no cogent evidence produced by the claimants in support of any such claim. Even there is no cogent material on record to justify the claim for enhancement of compensation at the rate of Rs.15/- per sq.meter.

20. The last point which arises for our consideration is what should be the just and

appropriate compensation payable to the claimants. In that regard, the claimants themselves have stated and the records also disclose that the land in question is situated at a place of walking distance from Mumbai-Pune National Highway. The claimants claimed that the distance between Taloja Railway Station and the acquired land is about 7 minutes walking distance, and 4 minutes walking distance to the Bombay Poona Highway. The gaothan area of the village Taloja lies at a distance of about 6 minutes walk from the said land in question. The acquired land has a levelled ground and since the year 1970, it has the water facility. The electricity facility is also available in the area. The land is clearly approachable by a bullock cart road and the S.T.stop lies at a distance of about 5 minutes walk from the plot in question. Considering all these aspects, therefore, though the land is an agricultural land, it has the potentiality for construction activities therein and therefore the same is having NA potentiality cannot be disputed. Though, the testimony of the valuer is of no much assistance for ascertaining the market value of the land, certainly the description of factual situation at the time of his inspection of the land in the year 1989 to the extent it disclosed different from the situation which existed in the year 1970, can be of

help to ascertain the market value of the land in the year 1970. The report prepared by the valuer also discloses certain facts which are clearly otherwise borne out from the record. It is also a matter of record that in land acquisition cases, relating to the acquisition of the land by the side of national highway in the year 1966, the compensation at the rate of Rs.4.78 ps. per square meter was awarded. Undoubtedly, the said compensation by itself cannot be a basis for ascertaining the market value of the land which was acquired in the year 1970. However, the same can be taken into consideration to ascertain what could be the market value in the year 1970 bearing in mind the increase in the land prices in the locality. To that extent, certainly, the decisions which are sought to have been relied upon by the learned Advocate for the claimants throw some light. Taking into consideration all these materials, certainly the market value of the land in question in the year 1970 could not be at the rate of Rs.3/- or Rs.4/- per square meter. At the same time, as already observed above, it cannot justify the market value at the rate of Rs.15/- per square meter. Taking into consideration the large extent of land and bearing in mind the evidence on record and the decisions referred above, in our considered opinion, the just and

appropriate market value of the land in the year 1970 ought to have been calculated at Rs.32,000/- per acre i.e. Rs.8/- per sq.meter. We therefore hold that the market value of the land in question on the date of issuance of the notification under Section 4 was at Rs.32000/- per acre. The compensation payable to the claimants ought to be calculated accordingly along with the other statutory benefits available under the said Act. The impugned judgment and award is to be modified accordingly.

21. The First Appeal filed by the State therefore partly succeeds and the impugned judgment and award stands modified accordingly. The First Appeal filed by the claimants is hereby dismissed. There shall be no order as to costs.

22. In case, the amount has already been disbursed in terms of the enhancement granted by the Reference Court, the claimants shall refund the same in terms of this judgment within a period of 12 weeks from today along with the interest thereon at the rate of 6% per annum, from the date of collection of amount till the date of repayment.

(R.M.S.KHANDEPARKAR, J)

(V.M.KANADE, J)